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ADAM B. SCHIFF

MEMBER OF CONGRESS • 28TH DISTRICT, CALIFORNIA

2269 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

245 EAST OLIVE AVENUE, SUITE 200
BURBANK, CA 91502

@RepAdamSchiff • schiff.house.gov

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July 31, 2019

The Honorable Ajit Pai
Chairman
Federal Communications Commission
455 12th Street SW
Washington, DC 20544

Dear Chairman Pai:

I am concerned that the Federal Communications Commission's proposed rules in the matter of "Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992" (MB Docket No. 05-311), in particular its proposal to count "cable-related, in-kind contributions" from cable operators against the franchise fees they pay to local communities, will reduce access to public, educational, and governmental (PEG) channels. I understand that the FCC will be voting on this matter as soon as this week.

Congress intended the Cable Act's franchise procedures and standards to "assure that cable systems are responsive to the needs and interests of the local community" and that they "are encouraged to provide the widest possible diversity of information sources and services to the public" (47 U.S.C § 521, 1984). To that end, the Cable Act permits local franchise authorities to require that cable companies provide access to PEG channels in addition to paying limited franchise fees.

PEG channels provide a critical local service in my district and in communities across the country. Under the proposed rules, however, the FCC would reclassify access to these channels, as well as other important community benefits, as in-kind contributions that would count against the statutory limit on the fees local governments can charge cable operators. This change, if finalized, could force communities to choose between collecting revenue from fees or providing access to PEG channels, thereby undercutting access to this essential local programming. At a time when local media is under financial pressure and in decline in many markets, preserving programming that focuses on local concerns should be a top priority.

As the FCC prepares to vote on this matter, I urge you to ensure that any final rule adequately protects access local programming. Thank you for your attention to my concerns.

Sincerely,

Adam B. Schiff

MEMBER OF CONGRESS



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 22, 2019

The Honorable Adam B. Schiff
U.S. House of Representatives
2269 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Schiff:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. As you know, the Communications Act limits franchise fees to five percent of cable revenues and defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. § 542(g)(1). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms "tax" and "assessment" were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490-91 (6th Cir. 2017). But the court held that just because the statutory definition of "franchise fee" *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491-92.

In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions from local franchising authorities, providers of PEG programming, and cable operators.

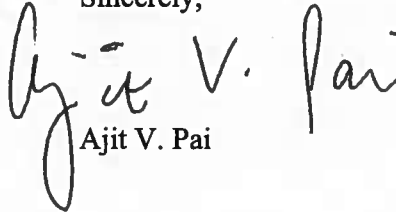
The Commission recently adopted the attached *Third Report and Order* at its August meeting. The order is the product of our careful consideration of this record. The result, we believe, is both consistent with the Act and responsive to your concerns regarding PEG programming. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as certain capital costs required by franchises granted after that date. 47 U.S.C. §§ 542(g)(2)(B) & (C). The order therefore concludes that cable-related, in-kind contributions—including PEG-related contributions—are "franchise fees" subject to the Act's five-percent cap unless otherwise expressly excluded.

At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record. The order also broadens the Commission's interpretation of an exclusion for certain PEG-related capital costs. These latter two conclusions directly address the concerns raised in your letter concerning the order's potential impact on PEG programming.

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Again, thank you for your letter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is written in a cursive style with a large, looping initial "A".

Ajit V. Pai

Attachment